country to which we could refer where acts of violence were directed against individuals. Take the case of Lovejoy, whose death was a pure crime — a horrible act of cruelty against a man who was doing nothing more than talking against slavery — and where there was no connection at all with any political movement. But in this Rudovitz case there was a direct connection with a political organization. Then, we find in the case of the Russian government, that it was resorting to things which a government would not resort to ordinarily, such as sending troops out to kill the agitators, to torture the people, in order to find out who were concerned as leaders in the revolution, and in that way to destroy them. The deeds of Rudovitz and his associates were, then, acts of retaliation by an organization which had no other effective means, perhaps, of retaliating against the government and bringing pressure to bear upon the government, that its own work might progress. Therefore, for those reasons, I believe that a political offense may be fairly defined to be one that is connected with a wide spread revolutionary movement, that is, committed as an incident of the struggle or at the instigation or order of an organized body whose acts are conducted for the chief part in a manner legitimate and regular, and that is in opposition to a regular government or its representatives.

The CHAIRMAN (Mr. Porter). The topic for discussion before the body is "the equality of nations." Professor Kirchwey is unavoidably absent, and Mr. Frederick C. Hicks will be invited to read a paper on that subject — I do not mean as a substitute to the gentleman I mentioned, but the other gentleman who is first on the list not being present, it is now in order for Mr. Hicks to read his paper.

ADDRESS OF MR. FREDERICK C. HICKS, OF BROOKLYN, N. Y.

Mr. Chairman, and Gentlemen of the Society. For almost three centuries writers on international law have included among fundamental principles the juristic equality of states. "All sovereign states," they say, "without respect to their relative power, are, in

the eye of international law, equal, being endowed with the same natural rights, bound by the same duties, and subject to the same obligations." The doctrine is said to possess both a philosophical and historical sanction, and its truth has seldom been questioned in the long course of its life. Therefore, it is only with the greatest humility that one should attempt a re-examination of the doctrine, careful always that personal predilection shall not give color to argument.

Philosophically, the principle was given form by Hugo Grotius. Universal sovereignty having ceased to be even theoretically possible, national states emerged, warring with each other for supremacy, and with no restraint except physical weakness. To relieve this situation Grotius invoked the so-called law of nature. As people were said to have been in a state of nature before the organization of governments, and though free, to have obeyed certain laws discovered to them by their own reason, so states, freed from any control from above were now in a state of nature with respect to each other. By analogy the law of nature was applicable to the relations of states. To explain the meaning and content of the law of nature, recourse was had to the Roman law in which the *jus gentium* and the *jus naturale* were identified. A favorite dogma of the *jus gentium* was the equality of men. Grotius adopted this conception, and so made the absolute equality of states a fundamental principle of his legal system.

Modern political theorists have satisfied themselves that historically there never was a state of nature such as Grotius premised. There certainly never was a law of nature that could be treated as a positive code; and the equality of men living according to a law of nature was a misconception. Liberty and equality for men did not exist until the organization of political communities. Until that time men had only such liberty as they could win from nature and each other by the exertion of powers. Equality is not therefore really a postulate of the law of nature and could not properly be said to become an attribute of states on the philosophical grounds which Grotius laid.

But the doctrine doubtless would never have been accepted by the

world of the seventeenth century had it not been for this erroneous appeal to the law of nature. The adoption of any principle by all states was a great stride in the world's progress, tending to bring order out of chaos, and set up standards of conduct which to this day are viewed with respect. Judged by its results in the years immediately following its promulgation, its justification is so strong that the attempt to discredit it merely by abstract reasoning resolves itself into a senseless quibble. It gave to weak states an admitted principle to which to appeal when dealing with strong states, and stayed the hand of those accustomed to crush without mercy.

Yet there came a time when states began to find numerous occasions for disregarding the principle. The law of nature seemed less and less a valid reason for a steadfast recognition of equality. It was then that there was brought forth the alternative and supplementary ground for equality which the far-seeing Grotius had advanced. He had asserted that states are bound by rules which have received the assent of all or most of their number. Whatever might have been the ground for the original consent, an appeal to history cumulating examples amounting to a custom, was sufficient to establish the validity of a rule. Thus, the great states of the world having agreed among themselves that recognition of the sovereignty of a state carries with it all the international rights and duties which they possess themselves, the rule is binding and can not be controverted. This undoubtedly is the sounder reason for asserting that all sovereign states are equal in international law. It is, in fact, a statement of the modern doctrine that international law is based on practice. Sovereignty having been defined as the absolute political independence of a state, the recognition of this attribute theoretically establishes the equality of states and admits them into the family of nations.

Therefore the question whether the equality of states is or is not at the present time a legal doctrine is answerable by an appeal to practice. It would be impossible at this time to examine in detail the numerous historical examples for and against the doctrine. It must suffice to say that before a meeting of this American Society of International Law an eminent authority asserted that "A crowd

of international incidents goes to prove the principle to be one almost more active and better known in its breach than in its observance." [1]

An increasing number of writers on international law are adopting this view and modifying their statement of the claim of equality. Thus Levi says, "All sovereign states, great or small, are equal in the eyes of international law, *such equality being subject to modification by compact and usage.*" [2] The usages referred to are those which authorize consular courts, spheres of influence, pacific blockades, and benevolent interventions.

But any interference in the affairs of a sovereign state, whatever be the motive, is in violation of its sovereignty and of the doctrine of equality. Two conclusions are possible from these facts: either the great powers have not in sincerity assented to the rule of equality as a result of the recognition of sovereignty, or the doctrine itself is not one that is practical in application. If the first conclusion is correct, there is no possible means of enforcing recognition of the alleged equality. A show of force by a combination of lesser powers would result merely in destroying that semblance of respect for the doctrine which now exists.

If the principle is intrinsically incapable of application to an actual state of affairs, it is well to realize the fact at once and begin anew. That the latter is the case may well be argued from two assertions of recent years. First, that the doctrine has ceased to operate for the benefit of those states which most need it; and, second, that if allowed to become operative it would give to minor states undue power in international affairs.

More results have been expected to flow from the fiction than it is capable of producing. Admitting for a moment the legal basis of the fiction, in any given case, practical considerations immediately outweigh any respect for it. The doctrine really exists only in an academic sense and has no inherent virtue or strength. It is invoked only when it happens to fit in with the desires of a state confronted with a problem. At all other times it is ignored except as a reason for ceremonial rules, all of which could be justified on common

[1] AMERICAN JOURNAL OF INTERNATIONAL LAW, April, 1907, p. 419.

[2] International Law, p. 111.

grounds of courtesy. It is not a practical doctrine because it connotes conceptions which now require restatement. The legal equality of states is said to result from the *recognition* of their *sovereignty* by members of the family of nations. Since sovereignty means the absolute political independence of states, it is impossible to look back of this attribute when it is once acknowledged. Absolute sovereignty must either be denied or acknowledged. The only escape from recognizing the equality of Cuba with Spain is to deny the sovereignty of Cuba. In one case an injustice is done to Spain; in the other, to Cuba. For legal sovereignty must ever be inextricably confused with commercial and economic sovereignty. There can be no absolute independence except in that "splendid isolation" which Japan once experienced. Yet, to quote from Lorimer,

> In any other sense than as a rule for the admission into, or exclusion from the family of nations, no doctrine of recognition has been considered possible. * * * It has been a case of
>
> "Black spirits and white,
> Red spirits and grey;
> Mingle, mingle, mingle,
> You that mingle may."

Such recognition puts all states in a false position; inducing minor powers to advance claims which they can not maintain, and large states to promise immunities which they can not grant. For recognition here means that the rights of states are equal, not that all are equally entitled to assert the rights which they have. If the latter were the case, recognition would be on a scientific basis conformable to the law of facts. States would not thereby lose any of the essential privileges which they now have, for they do not in reality possess anything but the empty name of equality. By defining their status, they would be placed in a position to improve it. Recognition would then be progressive, increasing in value as capabilities increased, and great states which failed to maintain a high standard would put themselves in danger of a loss of full recognition. The incentive for international progress would be great for all states, large or small, and the relative character of greatness and smallness would be emphasized. In this connection a very instructive lesson may be

learned from China. One of her delegates to the Second Hague Conference, impressed with the real position which his country occupied, had the hardihood to present to the Imperial government a memorial in which he said,

The distinction between strong and weak depends on the efficiency or otherwise of the country's governmental system, methods of law, and military and naval preparations. At the Conference there was no possibility of concealing the precise condition of each Power in comparison with another, and the mere fact of participating in the Conference implied an admission on the part of the participant that it accepted such a classification. * * * Your servant feels, on reviewing the international situation as well as that of China herself, that, unless perfection be attained by her in the essentials above mentioned — viz., governmental system, methods of law, and military and naval preparations — it is impossible to predict the treatment which we shall receive at the hands of the Powers at the next Conference. We may make distinctions as above between governmental system and military preparations, but in reality the main principle to be considered is methods of law, and this embraces the rest: Methods of law depend, not on the letter, but on national education and on the energy displayed by the Throne in enforcing them. * * * The next Conference is fixed for 1914 * * * and notice of the subjects to be discussed will be sent out two years previously, so as to facilitate a ready decision being come to upon the assembly of the Conference. Your servant regards this period as affording a providential opportunity to China to arrange her legal system and examine the political situation. He proposes that the various Conventions agreed upon at the Hague, together with the proposals which were not ultimately accepted, should be embodied in book form and distributed among our officials, and that the latter should report to the Wai-wu-pu their views and recommendations as to the course to be followed or avoided. The Wai-wu-pu should then carefully collate these recommendations and select the salient features therefrom. A conference should also be called of experts in the ancient legal system of China in conjunction with diplomats well acquainted with conditions prevailing in foreign countries and scholars possessing knowledge of foreign languages to unite in drawing up a national legal system, so as to give to foreigners no loophole for criticism, and at the same time to investigate the legal systems prevailing elsewhere. If by so doing both our political and legal systems could be brought into order in the next four years, China would be in a

position to show that she could hold her own with the other Powers when the invitation to the next Conference reaches her. If she could at the next Conference win a position among the Great Powers such as that which Japan holds at the present day, what an unspeakable blessing it would be for our country! But time soon passes by, and the consequences involved are very great. It will be for your Majesties to determine what efforts shall be made to prepare for the next Conference and to command the Wai-wu-pu and the other departments and officials concerned to take the necessary steps and draw up memorials in reply. Your servant took part in the Conference, and perceived the urgency of the situation. In the hope of devising a timely plan he makes his outspoken plea, trembling the while, with bated breath.[1]

If every member of the Second Hague Conference had gone home imbued with a purpose to set his own house in order, the world would have received incalculable benefit, and the legal equality of states would have ceased to be the most transparent of fictions. Instead, the Conference adjourned hopelessly divided on several important matters, some members returning to their governments to reiterate the absolute equality of all sovereign states, and others to insist on the falsity of the doctrine.

Thus, Sir Edward Fry. British delegate to the Conference of 1907, said,

> The claim of many of the smaller states to equality as regards not only their independence, but their share in all international institutions, waived by most of them in the case of the Prize Court, but successfully asserted in the case of the proposed new Arbitral Court, is one which may produce great difficulties, and may perhaps drive the greater powers to act in many cases by themselves.

This, in fact, is what is happening. The International Naval Conference of London, composed of the representatives of only ten states, has just finished its labors. If the conventions are ratified by the powers represented, there is little doubt but that they will eventually be adopted by all states. The *amour propre* of minor states will thereby be preserved; but in reality they will have lost

[1] *London Times*, Feb. 20, 1908, p. 4.

the opportunity to exert the influence which they possess since they have had no voice at all in shaping the measures.

If this method should again become the settled procedure in international affairs, a backward step from the Second Hague Conference will have been taken. At the First Hague Conference only twenty-six states were represented. Through the efforts of the United States, practically all civilized states were invited to participate in the Second Conference, which thereby became more truly representative than any international congress ever before assembled. But the difficulty of arriving at conclusions was intensified by the increased size of the Conference, the legal equality of states making a unanimous vote theoretically essential. This claim was vigorously asserted not only as to the method of voting in the Conference, but as an argument for and against numerous proposals. It was insisted not only that of right the vote of a small state should have equal weight with that of a large state, but that representation on all international tribunals that might be established should be equal.

Now, suffrage is not a natural right. It comes into existence only as a result of state organization. Even then it is not unlimited. All of the states represented at the Conference have restrictions on the privilege of suffrage in their governmental organizations. Until an individual has complied with the conditions set he may not vote. The Second Hague Conference was the nearest approach to a world organization that we have yet had. It would have been logical for the great powers, before inviting the lesser powers to participate, to have set limitations on their voting powers. But this was not done. It was only when beneficent measures clearly intended for the progress of the world were put in jeopardy, that the lesser states were asked to compromise somewhat their contention of equality. Their failure to do so postponed the establishment on a working basis of the Court of Arbitral Justice. If the great powers now take action which is in violation of equality, lesser states can not justly set up the claim of insincerity, since never before in the history of the world had the conditions existed to demonstrate so completely the fallacy and impracticability of the doctrine.

It has been stated that the doctrine of the legal equality of states,

when pressed to its logical conclusion, is incapable of practical application to international affairs. For this reason it is proposed to abandon the fiction of equality, and substitute for it the fact of inequality. This means also the substitution of interdependence for independence, and of proportional for absolute recognition.

The proposal is immediately open to the objection that it also is impracticable, and can not be put into force. Who is to decide what classification of states is equitable and just? On what basis is the distinction between states to be made? How are the necessary facts to be collected; and when discovered, how are these facts to be interpreted? These questions certainly can not be easily answered. It would be presumption for any individual or even for any state to answer them. And no permanent solution can be reached for many years without the cordial cooperation of all civilized states. If it were possible for each state to put itself in the balance and determine that weight of influence which it would be willing to accept, the problem would be measurably simplified. It is not likely that such a course will ever be adopted, and therefore the same ends must be attained by slower and less Utopian methods.

The equality of states is a legal fiction having no practical force. The "primacy of the great powers" is an established fact which is said to lack legal justification. But it is a power which can dominate the world. Let it then prove to the minor states that it will not misuse its power — that it desires cooperation and not mere acquiescence. Let it no longer grant the semblance of equality while denying the substance. On the contrary, let it frankly deny equality while granting that measure of recognition which is due. But the combined intellects of the master minds of the great powers could not devise a classification of states which would stand the test of time, for states change, and man is fallible. Therefore the new doctrine can only be built up very gradually by cumulation of individual cases in which it has been invoked with justice and sobriety. In each instance, let the claims of minor states be heard and heeded, basing the decision not only on naval and military strength, on natural resources, size, and geographical position, but on moral, economic, and commercial considerations and on the stability of their governmental systems.

Here is an opportunity for the exercise of the highest type of diplomacy, great powers appealing to weak powers to give up a cherished right about the reality and value of which there is a genuine difference of opinion. But since rights would be proportioned to the capability of performing duties, the essential justice of the proposal must eventually prevail.

The proposition is not that states shall give up any right essential to their independence or autonomy. Interference in the internal affairs of a state is not now safeguarded by the doctrine of equality. The appeal is that in all international conferences and tribunals the fiction shall not be insisted upon, in order that progress may not languish nor justice sleep.

Mr. JOHN W. FOSTER, of Washington, D. C. Mr. President: I suppose this is the last paper on the programme of exercises, so that we are a little short on material and long on time, by reason of the absence of two important papers. I think the subject just presented is one with which we can fill up the time profitably if the members of the society will take part. It is a very able paper to which we have just listened, and it presents the difficulties of both sides of this question. I am hardly prepared to say that the equality of states is a legal fiction. I do not think it is a fiction at all; I think it is a reality. Sir, we might compare it, it occurs to me, with the rights of men. In all countries, and especially in democratic or republican countries, all men are entitled to equal rights; but they do not exercise equal influence in the community. The negro is entitled to certain rights. It has been mentioned that the right of suffrage is not inherent, but must be acquired. It does not necessarily follow that the negro shall be entitled because he is a citizen to all the rights of other citizens. The ignorant white man is a citizen, entitled to all the rights of the intelligent man; and yet the man who is endowed with great intellectual capacity, or the man who has acquired a large fortune, or controls great industrial enterprises, is a man of much greater influence than the ignorant man, but it is not a legal fiction that the poor man is not equal with the rich man, or the ignorant man is equal in his rights with the man

of intellectual endowments, but we do recognize the fact that he has not the same influence.

My purpose is not to discuss the question, but to incite the members of the Society to fill up the remaining half hour, and I thought I might succeed by making this comparison.

Mr. L. B. Evans, of Tufts College, Mass. I hesitate very much to differ from Mr. Foster, but it seems to me that we have no clearer instance of legal fiction than this doctrine of the equality of states. I doubt if there has been a single moment since Grotius first promulgated that doctrine when it has actually conformed to the facts in the case. There has never been a time when nations were allowed to act upon the principle that they were equal, that they were possessed of equal rights which they were free to use in accordance with their own conception of what their best interests demanded. Some very clear instances of the limitations imposed upon nations in this respect will occur to the minds of all. We have, for instance, in the case of Belgium and Switzerland two states that have been neutralized. Doubtless they were very glad to be neutralized, but whether they were or not the interests of the other powers required that Switzerland and Belgium should be deprived of freedom to make cessions of their own territory. The Monroe Doctrine, in a way, is a standing example of the defiance of this principle of equality. In a famous case Secretary Olney stated, in a communication to the government of Great Britain, that on this continent the fiat of the United States is law. Now, that does not sound very much like the doctrine of equality. It seems to me that if the rules of international law are, as so many writers say, based upon international usage, then it must be said that the doctrine of equality of states is not now and never has been a part of international law.

Mr. N. Dwight Harris, of Evanston, Ill. What has just been said — we have in the very fact a great concrete example in the case of Servia. Servia was placed in a very embarrassing position by the annexation of Bosnia and Herzegovina by Austria. She had also suffered a great deal at the hands of Austria along commercial lines, and she was entitled to some sort of compensation or restitution in

money or in commercial advantages from Austria on account of that annexation, but she was given absolutely no chance to bring her case before a tribunal and have the thing settled upon its merits, but the larger powers insisted that little Servia should give way and accept whatever Austria wished to give her, in absolute disregard of equality, from the standpoint of justice. And I think that it is time that we should discuss this question, and that it should be brought to the attention of the powers that the smaller states have never yet to this moment received the treatment which is due to them, as equals, from the standpoint of justice alone.

Mr. F. W. Aymar, of New York City. Mr. President: I find myself unable to agree with the last two speakers. It seems to me that it is not a fiction that states are equal. If my conception of a state is correct, it means a certain amount of fixed territory, which has within it a certain political organization, and it seems to me that that is a fact. For instance, the United States has fixed territory, and also is politically organized, therefore the United States must be a state. Now, if those same facts exist in Patagonia, although the territory happens to be smaller, but there is political organization there, in control of that property, it seems to me that Patagonia is clearly a state. Therefore, I can not see how it is possible to say that this is a matter of pure fiction. It seems to me, in any instance, when you have territory and political organization, at least you have a state for practical purposes. It may not be the ideal state. I suppose the ideal state must have fixed territory, that is, geographic unity and ethnic unity; and, of course, we know, as a matter of fact, that states do not always possess that. The United States, for instance, approaches it; it does not possess it, because we have, for example, in the ethnic conception the negro, and there is not that same moral affiliation and influence which flow from that as if the state was ideal. But for all practical purposes states are alike; therefore it does not seem to me that this matter is a fiction. Take, for instance, among human beings — we have certain rights which are inherent in us, as human beings. It does not make any difference whether a man is a small man, or whether a person is a large

man, whether he is strong or whether he is weak; whether, for instance, he is suffering from disease, or whether he is in perfect physical health, he still has inherent in him certain natural rights; and it seems to me that states, as such, possess certain inherent rights, and it does not make any difference what the size of the state is, as far as the inherent rights of the state are concerned. Now, the common law under which the people of the United States and England live does not attempt to define rights which belong to a human being, as such. Those rights are only defined when we find that the right in some way is violated, and from that body of principles from which we find rights have been violated we deduce the principles of rights. But that does not exhaust the rights. Therefore, it seems to me that when we are dealing with states that international law does not attempt to define the rights of states. It seems to me we only look at these rights when these rights have been violated and attempt to deduce the principles from the violations of these rights. Therefore, I insist that the states are equal, and that it is not a question of fiction; it is a question of fact. I can not see the slightest notion of fiction. It seems to me that if my definition — my understanding — of a state is correct that they are equal. For as to whether, for instance, these states are to have equal voice in the management of the affairs of a nation it is a totally different question. It might easily be said that each state — that Rhode Island and New York — should have a representative on the supreme court of the United States, to determine all questions of law which are properly cognizable by that tribunal, but it does not follow because a state is equal that it must have the same representation in an organization. We might take this organization, for instance: we all have an equal voice in the organization, but for certain practical purposes it becomes necessary to delegate that authority to a smaller body. Therefore, in the aggregation of states there can be no objection to delegating to these states — delegating the power to a certain smaller body, this arbitral court, if you please, with power to pass upon the violation of these statutes. It seems to me that the question is far from a pure fiction; it is a question of actual fact.

Mr. THEODORE P. ION, of Boston, Mass. I just want to say a few words on the status of Belgium and Switzerland, which has been referred to by the speaker. Now, as far as I know, there is no doubt that Switzerland and Belgium are independent states. I do not know of any who has disputed the independence of Switzerland and Belgium, except one — Taylor — who wrote in his book that Belgium is some kind of a subordinate state, but from my study of the authorities, I think he is the only one.

Now, a state may be independent, but there may be some restrictions on its independence, but that does not deprive it of its right of equality. The independence of Switzerland, or the integrity of its territory, has been guaranteed by the European powers, for certain purposes; and as far as we know from the history of Europe, it is Switzerland itself who wanted that guarantee of its territory.

With respect to Belgium, there might be some difference of opinion. According to a Belgian writer, Mr. A. Rivier, if Belgium violated its own neutrality by allying with other powers, then she was to forfeit her privilege of neutrality.

But that does not mean that Belgium and Switzerland are not independent states; that does not mean, either, that they can not cede any part of their territory. There is nothing there about cession of territory — unless, of course, they cede a considerable part of their territory, which might then affect the interests of those who guaranteed the neutrality; that might give an advantage to France, Germany, or Italy.

We have another example here on this continent, that of the republic of Panama. The independence of the republic of Panama has been guaranteed by the United States, but the integrity of its territory is not guaranteed, as far as I know. If Panama to-morrow cedes part of her territory to another state, I do not see how because of that this country can intervene against any foreign power. That treaty guarantees only the independence of Panama, a state might be independent, like the Ottoman Empire, yet it might cede part of its territory. In all those European treaties we always see that when they guarantee the independence they also guarantee the integrity of the territory.

In regard to Servia, we all know the position taken by Servia in the question of the occupation of Bosnia and Erzegovina by Austria. Technically and legally Servia had no right against Austria. The only right that Servia had against Austria was an academic right, which is only founded on the principle of nationalities. By the Treaty of Berlin of 1878 Austria was allowed to control the two provinces and later on she violated the treaty of Berlin and declared that those provinces would be annexed to the Dual Monarchy; but Servia was not a party to that treaty. Legally Servia could not have any rights against Austria, except those rights, as I said, which are only founded on the principle of nationalities.

I am quite in sympathy with the aspirations of the Servians, and I am in sympathy with all the people who wish to unite — to effect their union; but that is an entirely different question.

It is the same thing with the Italians. The Italians also are not entirely united. There is the province of Trent, in Austria; that province of Trent is inhabited entirely by Italians. So Italy might, by the same fiction, have a right to that province, but Italy has no right in that province; it is a territory occupied by Italians under the sovereignty of Austria. The Italians might say, "They are Italians; we have the right to unite with that province." But, between an academic and a legal right there is a great difference.

Mr. E. C. Stowell, of Washington, D. C. I should like to say that I agree with the first speaker in considering the equality of states a fiction and one which has never been very consistently observed. In this country we have adopted a similar fiction regarding the equality of men upon which we have based our equal manhood suffrage. Now that this has once been given, it seems well nigh impossible to take away even though a better appreciation of the real situation should be arrived at. It is the same with states. The idea of equality and equal rights has been universally accepted and it will be most difficult to do away with even though it was demonstrated at the second Hague Conference that this equality of voting power presented very grave practical inconveniences. It being impossible to do away with this equal voting power, let us consider what will be the result upon the transaction of international business.

One result will be that the rules of procedure will hold an increasingly important place in international conferences. The presiding officer, once selected, will be given much greater power. It was seen at the Hague what trouble one boisterous member could make — he was so notorious that there is no need to mention his name. His opposition resulted in the failure of some very advantageous legislation. To obviate such difficulties will be the task of future "Steering" Committees and Committees on Rules. One of the most important matters which those who control the procedure of the assembly will have to arrange is the form in which the results of the work done in the conference shall be presented to the whole body for its ratification. If the presiding officer appoints a drafting committee or *comité de rédaction* composed of members from the powerful states they can so combine the acceptable with the unacceptable provisions that certain states who would like to vote against some particular part may be obliged to accept it rather than vote against the convention into which it is woven. During the whole Hague Conference, a continual strife went on because comparatively insignificant states wished to make use of the unanimity rule to prevent the adoption of certain measures. At the Conference of London, one of the most interesting and important questions related to the time at which a power might make use of its opposition to prevent the adoption of any particular measure. It is evident that if the rule of unanimity is only to be applied in the final stage of the proceedings when a convention embodying a long series of articles is submitted for adoption the veto power is much less effective than it would be where one state could prevent the incorporation of any particular provision in the final act.

A second result of the fiction of the equality of states seems to me to be the growing importance of international unions such as the postal union. In these international unions, decisions do not require an unanimous vote, a majority is sufficient. In theory, these unions are supposed to treat of administrative matters of a more or less routine nature, but in reality, the interests are no less important than those considered in diplomatic conferences. As has been said, the number of these unions is increasing as well as the

importance of the work done at their frequent meetings. In some of these unions, great powers like Great Britain have a separate vote for each administratively independent colony.

In conclusion then, it seems that procedure is likely to play a more and more important part in diplomatic conferences and to international unions will gradually be transferred the regulation of the most important international matters. This transformation may work so slowly that no one of us here will live to see the day when great international diplomatic conferences have been shorn of their real power. A later generation, however, may still have its international diplomatic conferences, but shorn of all real power like the Roman senate under the Empire.

Mr. Foster. My friend on the left here has some views. I would like to hear from Mr. Montague.

Mr. A. J. Montague, of Richmond, Va. The request of Mr. Foster is a command. I am a tyro upon this subject; but my observations and limited study have not changed the views imbibed from Grotius, Vattel and others. The equality of states is as well established as the equality of men; but the nature of this equality is the precise question involved. Men are not equal in character, influence, power, talents and culture; but a legal equality must be accorded every man, or his pursuit of life, liberty and happiness is a futile undertaking. If we do not recognize this legal equality there is no hope for the development of man. So with nations. A legal equality, embracing certain elements of independence and sovereignty as against all comers, must be accorded, or the nation is not a nation, is not a state. It is this recognition of the right of equality or independence which supplies us with the concept of a nation, which enables nations to treat with one another, and out of which international law grows.

We must not confuse the right of equality with the power to assert and maintain that right against a stronger power. The inability to maintain the right possessed demonstrates the inequality of power and not of right. It will not do to assert that men are

unequal because one man has the right of ballot while another does not have it. Men are equal in right of life and liberty. They are, however unequal in development and possessions. There is no inherent right to vote, as has been suggested here. The ballot is not a right; it is a privilege; and men are not unequal because not possessing the same privileges. Political capacity must precede political liberty. This doctrine is well established, I think, in Merriman's American Political Theories. I mention this simply to show the error of disposing of this question within the limited range of analogies, a mode of argument so treacherous, unless we confine the analogy to the basic rights which establish legal equality as distinguished from equality as respects actual power, influence, dignity, culture and refinement. The equality of nations is the highest guarantee for their achievement of this greater influence, dignity and power.

I wish, in conclusion, to suggest that the danger in discarding the doctrine of equality of states will be a tendency to prevent that cooperation of nations essential to the promulgation and practice of arbitral justice. This old rule had better be held for a while longer, until some new compensation in the teachings and practices of justice may be evolved by the nations.

I thank Mr. Foster, and make my apologies.

Dr. Lyman Abbott, of New York City. I hesitate to speak in this conference because I am not an expert in the matter of international law. But, as I have been listening to this debate I recalled what my father said to me when I went to the ministry, "I am sure that nine-tenths of the debates in the religious world have been controversies about words, and I rather think the other tenth has been also." It has seemed to me this morning that that certainly did not apply exclusively to the ministry, and that a part of our discussion here depended after all upon what we mean by the "equality of states." Some of us have meant one thing, and some of us have meant another and perhaps also a difference of opinion as to what we mean by "fiction." Let me avoid the word "equality" and the word "fiction" as far as possible, while I point out the

unquestionable fact that nations do not treat each other as equals to-day. For example, as I understand it, there are consular courts in China, and consular courts in Turkey, and if the interests of an American citizen are involved, he has the right to be tried before the consular court in Turkey or the consular court in China. We demanded that, and we secured it; but if Turkey should in turn say to us, "We demand the right to consular courts in the United States, and to have Turks in the United States tried before a Turkish consular court," I do not think that their demand would get much attention from us. We do not treat Turkey as we demand that Turkey should treat us. If anyone says to me, "Very well, then, you are not acting according to the Golden Rule, for you are not treating other nations as you expect them to treat you," I think there is an adequate answer, but I will not stop to discuss that question; I am stating facts. This inequality exists, and there is a real and just reason for its existence, and that reason rests not upon a difference in the power of nations, but upon a difference in their character. The individual exists for himself. He has a right to life, liberty and the pursuit of happiness. But the nation is not an end — it is a means to the end. The object of government is the protection of persons and property, and if a government fails to protect persons and property, it is not an equal of the nation that does protect persons and property, and people living in a real world must realize and act upon that reality. If in his home in America a man maltreats his wife or his children, there is a power in the nation which goes into his house and compels him to treat his wife and his children right. But if in Turkey the government fails to protect the person and property of an American, there is no international power, recognized as such, by which an international judge can send a policeman and the policeman compel the nation to do its duty. Therefore, it is of necessity, so long as the nation does not fulfill its function of protecting persons and property, proper that it should not be treated as the equal of a nation which does protect persons and property.

When I was in Constantinople a few years ago, a friend said to me, "Never send a letter to me without marking it, 'English post

office.'" I asked, "Why not?" He said, "Because it may never reach me through the Turkish post office. And, do not mail any letters from the Turkish post office, because they may never reach their destinations." Again I inquired, "Why not?" "Because," he replied, "there is a chance that some post office clerk will take off the postage stamps and sell them and throw your letter in the waste basket." And in point of fact, there is a German, a French, and an English post office in Constantinople. As long as that is the case Turkey is not the equal of the United States; not the equal of Great Britain. She is not the equal not because she is not so strong, not because she has not so much money, not because she has not so many people, but because she has not such a sense of justice and righteousness as deserves our confidence and does not adequately protect persons and property.

The CHAIRMAN (Mr. Porter). Gentlemen, we have a good deal of formal business to transact. The time is getting a little short. If there be no further remarks we will proceed to general business.

BUSINESS MEETING

The CHAIRMAN. Unless there be objection we will dispense with the reading of the minutes of the last meeting because they have all been published in our ANNUAL PROCEEDINGS.

First let me say that it was contemplated to have another session here this afternoon, and the Executive Council were to present some suggestions, and we find that we can very easily avoid calling a session this afternoon, as many have engagements, and it would be inconvenient to be here. Therefore, the Chair will now suggest that we take a recess of ten minutes, during which time the Executive Council will meet at the opposite end of the room, and have further consultation and present whatever they may have to this body. If there be no objection we will now take recess for ten minutes.

Thereupon, at 12.00 o'clock noon, the Society took a recess for ten minutes, when it was again called to order.